



# BULLETIN

## Summary of legislative bills

The following is a summary of the bills passed during the last legislative session which relate to the workers' compensation system. Also included is a list of other bills passed by the Legislature which pertain to the judiciary or state government. The full text of these bills may be accessed from the Unicameral's website (<http://www.unicam.state.ne.us>).

The court has tentatively scheduled a public hearing for November 14, 2007 at 9:30 a.m. to propose amendments to its Rules of Procedure pursuant to the passage of LB 588. A Notice of Hearing will be announced on our website (<http://www.wcc.ne.gov>).

### *Bills Related to Workers' Compensation*

#### LB 588:

- Hospital Diagnostic Related Group (DRG) Fee Schedule
- Prompt Payment of Medical Expenses
- Scheduled Member Impairments

#### Hospital DRG Fee Schedule

*Section 48-120* was amended to create a new fee schedule for inpatient hospital services based on the payment method used by Medicare. New subsection (1)(c) provides that for inpatient discharges on or after January 1, 2008, reimbursement

Nebraska Workers' Compensation Court  
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800-599-5155 or 402-471-6468  
<http://www.wcc.ne.gov>



## Laureen Van Norman elected Presiding Judge of Workers' Compensation Court

Judge Laureen K. Van Norman was elected Presiding Judge of the Nebraska Workers' Compensation Court effective July 1, 2007 at the recent biennial meeting of the court's judges in Lincoln. Judge Van Norman replaces Judge Michael K. High, who has been presiding judge since July 1, 2001.

The seven Nebraska Workers' Compensation Court judges, appointed by the governor, have statewide jurisdiction to hear disputed cases of job-related injuries, illnesses or deaths. The presiding judge is selected from among the judges for a two-year term.

Judge Van Norman was appointed to the Nebraska Workers' Compensation Court on July 6, 1993. She is a graduate of the University of Nebraska-Lincoln (BA, social work); University of Nebraska College of Law (JD). Former Legal Counsel to the Nebraska Department of Labor. Nebraska State Bar Association: past Chair of Government Practice Committee; past member, Executive Board of Women and the Law Section; member, Supreme Court Gender Bias Task Force. Judge Van Norman was appointed to the Workers' Compensation Court by Governor Ben Nelson.

For more information regarding workers' compensation in Nebraska, please visit the court's website (<http://www.wcc.ne.gov>) or call our information line at 1-800-599-5155 or 402-471-6468. ♦

## Guidelines for Medicare Set-Aside Accounts in Lump Sum Settlements now available on the court's website

The Nebraska Workers' Compensation Court has developed guidelines for Medicare Set-Aside arrangements in lump sum settlements. These guidelines are available in portable document format (pdf) on the Benefit Calculation page of our website (<http://www.wcc.ne.gov/bc.htm>) and on Page 5 of this *Bulletin*. ♦

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for inpatient hospital services provided by hospitals located in or within 15 miles of a Nebraska city of the metropolitan class or primary class and by other hospitals with 51 or more licensed beds shall be according to the Diagnostic Related Group inpatient hospital fee schedule (DRG Fee Schedule). Diagnostic Related Group means the Diagnostic Related Group assigned to inpatient hospital services using the public domain classification and methodology system developed for the Centers for Medicare and Medicaid Services under the U.S. Department of Health and Human Services.

Under the DRG Fee Schedule, the basic reimbursement shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Factor for each hospital. Current Medicare Weight means the weight assigned to each Medicare DRG as established by the Centers for Medicare and Medicaid Services. The Workers' Compensation Factor is defined as the Current Medicare Factor for each hospital multiplied by 150 percent. The Current Medicare Factor is derived from the DRG Prospective Payment system as established by the Centers for Medicare and Medicaid Services. It takes into consideration wage indices, percentage of low-income patients served, medical education costs associated with the hospital, and a national calculation of average capital costs and operating costs geographically adjusted. Each hospital will be required to assign and include a DRG on each workers' compensation claim submitted. In addition, the chief executive officer of each hospital shall sign and file with the administrator of the compensation court by October 15 of each year a sworn statement disclosing the Current Medicare Factor of the hospital in effect on October 1 of such year.

For outlier cases that require unusual expense to treat, LB 588 provides additional

compensation through a Stop-Loss Threshold. The Stop-Loss Threshold amount is the basic DRG reimbursement multiplied by 2.5. When billed charges are greater than the Stop-Loss Threshold amount, hospitals will be paid the basic DRG reimbursement plus 60 percent of the amount exceeding the Stop-Loss Threshold. For charges less than the Stop-Loss Threshold, the hospital shall be reimbursed the lower of the hospital's billed charges or the basic DRG reimbursement.

The bill also adds subsection (1)(d) under §48-120 to provide that a workers' compensation insurer, risk management pool, self-insured employer, or managed care plan certified pursuant to §48-120.02 may contract with a provider or provider network for medical, surgical, or hospital services. Such contract may establish fees for services which differ from the fee schedules established under the existing court fee schedule or those established under the DRG Fee Schedule. New language regarding balance billing was also added under §48-120(1)(e). This provision states that the medical provider shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of 1) the fee established by the compensation court for any such service, 2) the fee established under the DRG Fee Schedule, or 3) the fee contracted under 48-120(1)(d).

Charges for all other stays or services that are not on the DRG Fee Schedule or are not contracted for under §48-120(1)(d) shall be reimbursed in accordance with the compensation court's existing fee schedule.

LB 588 provides that the DRG Fee Schedule shall include at least 38 of the most frequently utilized Medicare DRGs

for workers' compensation with the goal that the fee schedule covers at least 90 percent of all workers' compensation inpatient hospital claims submitted by hospitals identified in §48-120(1)(c) referenced above. Rehabilitation Diagnostic Related Groups shall not be included in the DRG Fee Schedule. Claims for inpatient trauma services shall not be reimbursed under the DRG Fee Schedule until January 1, 2010. Claims for inpatient trauma services prior to January 1, 2010 shall be reimbursed under the fees established by the compensation court under the existing fee schedule or as contracted pursuant to §48-120(1)(d). Trauma means a major single-system or multi-system injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

The bill requires each hospital, workers' compensation insurer, risk management pool, and self-insured employer to report to the administrator of the compensation court by October 15 of each year the total number of claims submitted for each DRG and the number of times billed charges exceeded the Stop-Loss Threshold amount for each DRG. The compensation court may add or subtract DRGs from the DRG Fee Schedule in striving to achieve the goal of including those DRGs that encompass at least 90 percent of the inpatient hospital workers' compensation claims submitted by hospitals identified in §48-120(1)(c). The administrator shall annually make necessary adjustments to comply with the Current Medicare Weights and shall annually adjust the Current Medicare Factor for each hospital based on the hospital's annual statement of its Current Medicare Factor. LB 588 requires the compensation court to publish and furnish to the public the existing fee schedule and the DRG Fee Schedule.

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## Prompt Payment of Medical Expenses

The bill sets forth new requirements to ensure prompt payment of workers' compensation claims. Regarding payment of claims for medical, surgical, or hospital services for state employees, the Prompt Payment Act applies. See §81-2401 et seq. Regarding payment of claims for medical, surgical, or hospital services for non-state employees, the workers' compensation insurer, risk management pool, or self-insured employer (payor) shall notify the provider within 15 business days after receiving a claim as to what information is necessary to process the claim. Failure to notify the provider assumes the payor has all information necessary to pay the claim. The payor shall pay providers in accordance with §48-120 and the DRG Fee Schedule within 30 business days after receipt of all information necessary to process the claim. Failure to pay the provider within the 30 days will cause the payor to reimburse the provider's billed charges instead of the scheduled or contracted fees.

If a claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the payor or its clearinghouse. If a claim is submitted by mail, the claim is presumed to have been received five business days after the claim has been placed in the U.S. mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all.

Payment of a claim by the workers' compensation insurer, risk management pool, or self-insured employer means the receipt of funds by the provider. If payment is submitted electronically, the payment is presumed to have been received on the date of electronic verification of receipt by the provider or the

provider's clearinghouse. If payment is submitted by mail, the payment is presumed to have been received five business days after the payment has been placed in the U.S. mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the payment was received on another day or not received at all.

## Scheduled Member Impairments

**Section 48-121(3)** was amended to provide that if, in the compensation court's discretion, compensation benefits payable for a loss or loss of use of more than one member or parts of more than one member, resulting from the same accident or illness, do not adequately compensate the employee for such loss or loss of use and such loss or loss of use results in at least a 30 percent loss of earning capacity, the compensation court shall, upon request of the employee, determine the employee's loss of earning capacity consistent with the process for such determination under §48-121(1) or (2), and in such a case the employee shall not be entitled to compensation under §48-121(3).

*Operative date of DRG Fee Schedule September 1, 2007*

*Operative date of prompt payment and scheduled member provisions January 1, 2008*

## LB 117: Assigned Risk System

**Section 48-146.01** was amended to provide that if the assigned risk system ceases to be viable, the Director of Insurance would be authorized, after consultation with workers' compensation insurers, to create a reasonable alternative assigned risk system involving the sharing of premiums and losses for assigned risk employers among all such workers' compensation insurers and risk management pools. Such alternative assigned risk system shall not utilize an

average rate level of less than 2½ times the prospective loss costs approved for an advisory organization pursuant to §44-7511. In addition, §48-146.01 will be reassigned by the Revisor of Statutes to Chapter 44, article 3. Section 48-144.04 was also amended to harmonize internal references consistent with the reassignment of §48-146.01.

*Effective date September 1, 2007*

## LB 322: Trust Fund Transfers

**Section 48-162.02** was amended to strike language allowing legislative fund transfers from the Workers' Compensation Trust Fund to the Compensation Court Cash Fund for the purpose of paying salaries, other benefits, and administrative expenses of the compensation court relating to the Workers' Compensation Trust Fund.

*Operative date July 1, 2007*

## Bills Related to the Judiciary

### LB 377: Judges' Salaries

Provides that salaries for Supreme Court judges shall increase from \$126,846 to \$131,285.61 beginning July 1, 2007, and increase to \$135,880.60 beginning July 1, 2008.

*Operative date July 1, 2007*

## Bills Related to State Government

### LB 674: Employer Use of Social Security Numbers

This bill provides that an employer shall not 1) publicly post or display or make available to the employee's coworkers more than the last four digits of an employee's social security number, 2)

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require an employee to transmit more than the last four digits of his or her social security number over the internet unless the connection is secure or the information is encrypted, 3) require an employee to use more than the last four digits of his or her social security number to access an internet website unless a password, unique personal identification number, or other authentication device is also required, or 4) require an employee to use more than the last four digits of his or her social security number as an employee number for any type of employment-related activity.

The bill also clarifies that employers are permitted to use more than the last four

digits of an employee's social security number only for 1) compliance with state or federal laws, rules, or regulations, 2) internal administrative purposes including provision of more than the last four digits to third parties for such purposes as administration of personnel benefit provisions for the employer and employment screening and staffing, and 3) commercial transactions freely and voluntarily entered into by the employee with the employer for the purchase of goods or services. The following uses for internal administrative purposes shall not be permitted: 1) as an identification number for occupational licensing, 2) as an identification number for drug-testing purposes except when required by state

or federal law, 3) as an identification number for company meetings, 4) in files with unrestricted access within the company, 5) in files accessible by any temporary employee unless the temporary employee is bonded or insured under a blanket corporate surety bond or equivalent commercial insurance, or 6) for posting any type of company information.

An employer in violation of such provisions is guilty of a Class V misdemeanor.

*Operative date September 1, 2008* ❖

## Court website traffic topped half a million hits in FY 2007

**T**raffic on the court's website during Fiscal Year 2007 reached 677,105 hits, an increase of 81.9 percent over the previous fiscal year. During the past five years, the court has seen a 588.9 percent increase in website traffic.

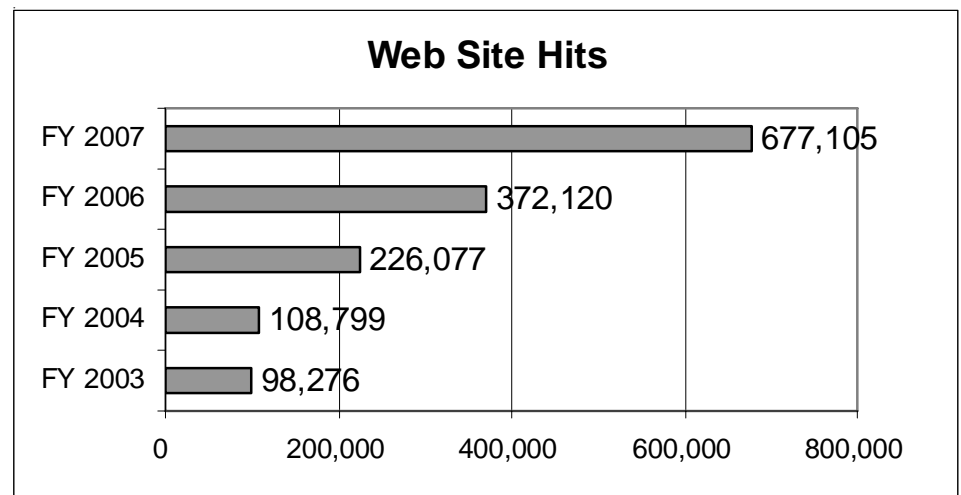
The News Feed was accessed most often, with 141,539 hits in FY 2007. Also popular were the Schedule of Medical and Hospital Fees, Frequently Asked Questions, Rules of Procedure, and the Calls and Opinions page.

The court has steadily upgraded its website since its inception in 1996 to better serve the public and make use of ever improving technology. In addition to the Really Simple Syndication (RSS) News Feed, features of the website include an electronic Public Records Request form, Decisions and Orders Database, Benefit Calculators, and a Google-powered search engine. The court's publications and forms are available in portable document format (PDF) and may be downloaded at

no charge from the website. The public can view the website, download its contents, and operate its electronic forms in mobile/handheld devices (such as internet-enabled cell phones and PDAs) as well as in all standard web browsers. To help make the website accessible to people with disabilities, the court maintains 'AAA' Compliance with the

Web Content Accessibility Guidelines of the World Wide Web Consortium (WCAG/W3C).

Current efforts include a major website enhancement project. Please visit our website (<http://www.wcc.ne.gov>) for announcements of upcoming website developments. ❖





## Guidelines for Medicare Set-Aside Accounts in Lump Sum Settlements

Medicare status and lump sum settlement amount:	Does the application need to address Medicare's interest?	Is the CMS letter required prior to approval of the application?	Can the set-aside amount be used in calculating indemnity due?	What language must be used in the proposed order of approval?
Medicare beneficiary and settlement amount is over \$25,000.00 (current CMS review threshold).	YES.	YES.	NO. Set-aside amounts do not count as indemnity. Settlement amount alone must be sufficient to cover the indemnity due.	Settlement amount and set-aside amounts listed separately. For example, "upon payment of \$50,000.00 plus \$10,000.00 to fund a Medicare Set-Aside . . . "
Medicare beneficiary and settlement amount is under \$25,000.00.	YES.	NO (below threshold).	NO. Set-aside amounts do not count as indemnity. Settlement amount alone must be sufficient to cover the indemnity due.	Settlement amount and set-aside amounts listed separately. For example, "upon payment of \$15,000.00 plus \$1,000.00 to fund a Medicare Set-Aside . . . "
Reasonable expectation <sup>1</sup> of becoming Medicare beneficiary within 30 months and settlement amount is over \$250,000.00.	YES.	YES.	NO. Set-aside amounts do not count as indemnity. Settlement amount alone must be sufficient to cover the indemnity due.	Settlement amount and set-aside amounts listed separately. For example, "upon payment of \$255,000.00 plus \$50,000.00 to fund a Medicare Set-Aside . . . "
Reasonable expectation <sup>1</sup> of becoming Medicare beneficiary within 30 months and settlement amount is under \$250,000.00.	NO. Parties do not need to address Medicare's interests when claimant is not a current Medicare beneficiary and the settlement is below the CMS review threshold.	NO (below threshold).	YES. Any set-aside would be voluntary and the entire amount can be used to calculate indemnity coverage.	Total amount can include any voluntary set-aside funds.
No reasonable expectation <sup>1</sup> of becoming Medicare beneficiary within 30 months, regardless of settlement amount.	NO.	NO.	YES. Any set-aside would be voluntary and the entire amount can be used to calculate indemnity coverage.	Total amount can include any voluntary set-aside funds.

<sup>1</sup>One has a "reasonable expectation" of becoming a Medicare beneficiary within 30 months when: he/she has applied for SSDI (becomes eligible for Medicare after receiving SSDI for 24 months) OR he/she is age 62.5 (will be eligible when he/she turns 65, which is within 30 months) OR he/she is appealing a denial of an application for Social Security benefits.

# Nebraska Workers' Compensation Court

## Contact Information

### Email:

To contact the court by email, select either of the following links on our website:

- **Contact Us** (<https://www.nebraska.gov/WC/contact.phtml>) for a response from a public information specialist
- **Professional Staff** (<http://www.wcc.ne.gov/about/staff.htm>) to email a specific staff member

### Telephone (Information Line):

**Note:** Court staff utilize AT&T's Language Line Services to provide over-the-phone interpretation for callers for whom English is not a primary language.

- 800-599-5155 (toll-free Information Line)
- 402-471-6468

### Fax:

- 402-471-8231 (**Clerk of the Court: State Capitol Building, Lincoln.** Use this number to fax pleadings and other papers to be filed with the Clerk of the Court)
- 402-471-2700 (**Administrative Offices: TierOne Center, Lincoln**)
- 402-595-1299 (**Omaha Offices: Hall of Justice, Omaha**)
- 402-742-8311 (**Vocational Rehabilitation: TierOne Center, Lincoln.** Use this number to fax information to the court's Vocational Rehabilitation staff)

### Mailing and Physical Address:

- **Regular Mail (Including Filings by Mail):**  
Nebraska Workers' Compensation Court  
P.O. Box 98908  
Lincoln NE 68509-8908
- **Lincoln Hearings, Filings in Person, Filings by FedEx, UPS, etc., and Deliveries to State Capitol offices:**  
Nebraska Workers' Compensation Court  
State Capitol Building, 13th Floor  
1445 'K' Street  
Lincoln, NE 68508
- **Deliveries to TierOne Center offices:**  
Nebraska Workers' Compensation Court  
TierOne Center  
1221 'N' Street, Suite 402  
Lincoln, NE 68508
- **Omaha Hearings and Deliveries to Hall of Justice offices:**  
Nebraska Workers' Compensation Court  
Hall of Justice  
1701 Farnam Street  
Omaha, NE 68183-0001